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**GOVERNMENT NOTICE**

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**DEPARTMENT OF LABOUR**

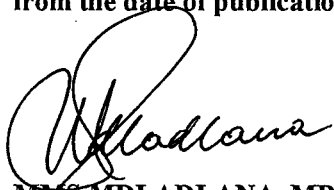
No. R. 841

18 August 2006

**EMPLOYMENT EQUITY ACT, 1998 (ACT 55 OF 1998)****AMENDMENTS TO THE EMPLOYMENT EQUITY REGULATIONS**

I Membathisi Mphumzi Shepherd Mdladlana, Minister of Labour, under section 55 (1) of the Employment Equity Act, 1998 (Act No 55 of 1998), and on the advice of the Commission for Employment Equity, hereby amend the regulations made in terms of the Employment Equity Act, Act 55 of 1998, published under Government notice R 1360 in Government Gazette 20626 of 23 November 1999, the Notice in R 955 in Government Gazette 21583 of 2 October 2000 and the Notice in R 480 in Government Gazette 28858 of 26 May 2006 as set out in the schedule.

The amended regulations replaces the regulations published in Government Notice R 1360 in Government Gazette 20626 of 23 November 1999, the Notice R 955 in Government Gazette 21583 of 2 October 2000 and the Notice in R 480 in Government Gazette 28858 of 26 May 2006. These amendments are to be effective from the date of publication of this notice.



**MMS MDLADLANA, MP**  
**MINISTER OF LABOUR**

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## 1. Definitions

In these regulations any expression that is defined in the Employment Equity Act, 1998, has that meaning and unless the context otherwise indicates:

- 1.1 **“Director-General”** means the Director-General of the Department of Labour, which also includes the highest authority of the Department of Labour in the:
  - (i) Kwa-Zulu/Natal Province;
  - (ii) Northern Cape Province;
  - (iii) Limpopo Province;
  - (iv) North West Province;
  - (v) Eastern Cape Province;
  - (vi) Mpumalanga Province;
  - (vii) Free State Province;
  - (viii) Gauteng Province (i.e. Gauteng South and Gauteng North); and
  - (ix) Western Cape Province.
- 1.2 **“the Act”** means the Employment Equity Act, 1998 (Act No.55 of 1998).
- 1.3 **“A workplace”** means the place or places where the employees of an employer work. If an employer carries on or conducts two or more operations that are independent of one another by reason of their size, function, or organization, the place or places where employees in connection with each other's independent operation, constitute the workplace for that operation.
- 1.4 **Non-permanent workers** refer to those workers who are employed to work for less than 24 hours per month, or those workers engaged to work for not more than 3 continuous months.
- 1.5 **“Designated groups”** means Black people (i.e. Africans, Coloureds and Indians), women and people with disabilities who are natural persons and:
  - 1.5.1 are citizens of the Republic of South Africa by birth or descent; or
  - 1.5.2 are citizens of the Republic of South Africa by naturalisation before the commencement date (i.e. 27 April 1994) of the Constitution of the Republic of South Africa Act of 1993; or
  - 1.5.3 became citizens of the Republic of South Africa from the commencement date of the Constitution of the Republic of South Africa Act of 1993, but who, not for Apartheid policy that had been in place prior to that date, would have been entitled to acquire citizenship by naturalisation prior to that date.

## 2. Assigning a Senior Manager(s)

Assigned senior manager(s) for employment equity must be:

- 2.1 Permanent, report directly to the Chief Executive Officer on employment equity matters. This person must have key employment equity outcomes incorporated into their performance contracts;
- 2.2 Given the necessary executive authority and mandate; and
- 2.3 Provided with an appropriate budget and access to other required resources.

### 3. Consultations

- 3.1 All employees must be informed of the content and application of the Act, employment equity and anti-discrimination issues, the process to be followed by the employer, and the need for the involvement of all stakeholders, as preparation for their participation and consultation.
- 3.2 A consultative forum must be established or an existing forum utilised. The forum must include employee representatives reflecting the interests of employees from all occupational categories and levels and both designated and non-designated groups.
- 3.3 Consultation must include:
  - Regular meetings and feedback to employees and management; and
  - Access to relevant information by employees.
- 3.4 Where a representative body or trade union refuses to take part in the consultation process, the employer must record the circumstances in writing. A copy of this document must be provided to the representative body or trade union concerned.

### 4. Collecting information and conducting an analysis (Section 19 of the Act)

- 4.1 When a designated employer collects information about individual employees for the purpose of compiling a workforce profile to determine the degree to which employees from designated groups might be underrepresented, the employer must request each employee in the workforce to complete a declaration using the EEA1 form.
- 4.2 Employees must at any time be able to add information to the EEA1 form.
- 4.3 Where an employee refuses to complete the EEA1 form or provides inaccurate information, the employer may establish the designation of an employee by using reliable historical and existing data.
- 4.4 A designated employer must use section B of the EEA2 form to develop the workforce profile of employees as required by section 19(2) of the Act.
- 4.5 When a designated employer conducts the analysis required by section 19(1) of the Act, the employer may refer to:
  - a) Annexure 1, for demographic data;
  - b) Annexure 2, which contains the definitions of occupational levels; and
  - c) Annexure 3, which contains the definitions of occupational categories.
- 4.6 A designated employer must refer to the **Code of Good Practice: Preparation, Implementation and Monitoring of Employment Equity Plans** as a guide when collecting information and conducting the analysis required by section 19 of the Act.
- 4.7 The analysis must involve reviewing of all policies, procedures, practices and the work environment in order to eliminate unfair discrimination and promote employment equity in the workplace, including when commencing employment, during employment and ending employment.

### 5. Duty to prepare and implement an employment equity plan (Section 20 of the Act)

- 5.1 A designated employer may refer to the **Codes of Good Practice: Preparation, Implementation and Monitoring of Employment Equity Plans, and other relevant Codes** when preparing the employment equity plan required by section 20 of the Act.
- 5.2 A designated employer must retain the employment equity plan for a period of three years after the expiry of the plan, unless the employer employs fewer than 150 employees, in which case the plan must be retained for two years.
- 5.3 The employment equity plan must contain a description of the measures taken by the designated employer to eliminate unfair discrimination in that employer's workplace.

**6. Duty to report (Section 21 of the Act)**

- 6.1 Each designated employer must submit a report in terms of Section 21 of the Act using the EEA2 form together with the EEA4 to: Employment Equity Registry, Department of Labour, Private BagX117, Pretoria, 0001.
- 6.2 Large employers must submit their first report within six months of being designated, and thereafter annually on the first working day of October; and small employers must submit their first report within twelve months of being designated, and thereafter on the first working day of October of every year that ends with an even number.
- 6.3 Large employers, i.e. employers with 150 and more employees, must complete the entire EEA2 reporting form. Small employers, i.e. employers with fewer than 150 employees, must only complete areas of the EEA2 form that apply to them. Areas that only apply to small employers shall be made available by the Department in a separate form as well. All relevant areas of the form must be fully and accurately completed by employers. Employers who fail to observe this provision will be deemed not to have reported.
- 6.4 A designated employer whose operations extend across different geographical areas or workplaces must submit a report. Employers who submit consolidated reports must have individual employment equity (EE) plans and relevant information for each entity or workplace that have been included in the consolidated report. The consolidated report and the individual EE plans and relevant information must be made available at each entity or workplace. The method of reporting should be consistent from year-to-year or from reporting period to reporting period.
- 6.5 An employer who becomes a designated employer must notify the Director General in writing and provide valid reasons for not being able to report on the first working day of October. This notification must reach the Director General by no later than the last working day of August in the same year. The Director General will examine the reasons that were provided by the employer and shall decide on whether to accept or reject them, which may lead to the non-acceptance of the notification. The Director General's decision shall be final.
- 6.6 A designated employer must retain a copy of the report for a period of three years after it has been submitted to the Director-General, unless the employer has fewer than 150 employees, in which case the report must be retained for two years.

**7. Duty to inform (Section 25 of the Act)**

- 7.1 Each employer must display the notice required by Section 25(1) of the Act (i.e. the summary of the Act).
- 7.2 If there are employees in the workplace who are unable to read this notice, the employer must inform those employees about the provisions of the Act.
- 7.3 The notice referred to in clause (7.1) is annexed as EEA3 in the regulations.

**8. Income differentials (section 27 of the Act)**

- 8.1 Each designated employer must submit a statement of income differentials required by section 27 of the Act in using the EEA4 form.
- 8.2 When completing the EEA4 form, designated employers must refer to EEA9 and the EEA10 for guidance.
- 8.3 Designated employers must submit the EEA4 statement together with the EEA 2 Forms to: Employment Equity Registry, Department of Labour, Private BagX117, Pretoria, 0001.
- 8.4 Designated employers must retain a copy of the statement for a period of three years after it has been submitted to the Employment Conditions Commission, unless the employer has fewer than 150 employees, in which case the statement must be retained for two years.

**9. Proof of submission and authenticity**

- 9.1 Whenever a person is required to satisfy any other person that a copy of any document required or prescribed by the Act or its regulations, excluding the EE report, has been submitted to the other party, that person may do so by providing:
- a) A copy of the proof of mailing the document by registered post to the other party;
  - b) A copy of the telegram, telex, telefax or e-mail, including proof of transmission of the document to the other party;
  - c) A copy of a receipt signed by the other party or on that party's behalf if the document was delivered by hand;
  - d) A statement confirming delivery signed by the person who delivered the document.
- 9.2 A copy of any document submitted to a Labour Inspector or any official of the Department of Labour must be signed by an authorised person as proof of authenticity.

**10. Review by Director General (Section 43 of the Act)**

- 10.1 The Director General may conduct a review to determine the extent to which an employer is complying with the Act.
- 10.2 The review shall be conducted using a system that includes a Numerical Analysis Model. This model shall be used as a filtering tool to assess the degree to which the various designated groups (i.e. Blacks, women and people with disabilities) are represented at each occupational level in an employer's workplace. In addition to Blacks, women and people with disabilities, African representation is included as a fourth variable for assessment in an employer's workplace.
- 10.3 The DG shall assess and rank each designated group to address their under representation by taking their National and Provincial Economically Active Population (EAP) into consideration. This principle shall also apply to groupings within each of these designated groups in terms of race and gender.

**11. Enforcement (Chapter 5 of the Act)****11.1 Securing an undertaking (Section 36 of the Act):**

A labour inspector must request and obtain a written undertaking using the EEA5 form.

**11.2 Compliance order (Section 37 of the Act):**

A labour inspector may issue a compliance order to a designated employer using the EEA6 form.

**11.3 Objections to compliance order (Section 39 of the Act):**

- (a) A designated employer may object to a compliance order by making a representation to the Director-General using the EEA7 form.
- (b) The objection must be lodged with the highest authority at the Provincial level of the Department of Labour.





DEPARTMENT OF LABOUR

**(Confidential)**  
**Declaration by employee**

**PLEASE READ THIS FIRST**



**Purpose of this form**

This form is used to obtain information from employees for the purpose of assisting employers with conducting an analysis on the workforce profile. Employers should use this form to ascertain which employees are from designated groups in terms of the Employment Equity Act, 55 of 1998.

**Who fills in this form**

Employees should fill in this form.

**Instructions**

Employers must ensure that the contents of this form remain confidential, and that it is only used to comply with the Employment Equity Act, 55 of 1998.

'People with disabilities' are defined in the Act as people who have long-term or recurring physical or mental impairment, which substantially limits their prospects of entering into, or advancement in employment.

1. Name of employee: \_\_\_\_\_

2. Employee workplace No: \_\_\_\_\_  
(This is the number that an employer/company/organization uses to identify an employee in the workplace.)

3. Please indicate to which categories you belong:

Male  Female   
African  Coloured  Indian  White

Foreign National:

If you are not a citizen by birth, please indicate the date you acquired your citizenship: .....

Person with a disability:

Specify nature of disability:  
\_\_\_\_\_

4. I verify that the above information is true and correct.

Signed: \_\_\_\_\_  
Employee

Date: \_\_\_\_\_



labour  
Department:  
Labour  
REPUBLIC OF SOUTH AFRICA

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EEA2

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**PLEASE READ THIS FIRST****PURPOSE OF THIS FORM**

This form enables employers to comply with Section 21 of the Employment Equity Act 55 of 1998.

This form contains the format for employment equity reporting by employers to the Department of Labour. Both small employers (i.e. employers employing fewer than 150 employees) and large employers (i.e. employers employing 150 or more employees) are required to use this form. Those employers who are not designated, but wish to voluntarily comply, must also use this reporting form.

Although all sections of this form apply to large employers, only certain sections of this form should be completed by small employers. Employers who report for the first time are not required to complete the progress report section of this form.

**WHO SHOULD COMPLETE THIS FORM?**

All designated employers that have to submit a report in terms of the Employment Equity Act, 55 of 1998. Employers who wish to voluntarily comply with the reporting requirements of the Act are also required to complete this form.

**WHEN SHOULD EMPLOYERS REPORT?**

- Large employers must submit their first report within six months of being designated, and thereafter annually on the first working day of October; and
- Small employers must submit their first report within twelve months of being designated, and thereafter on the first working day of October of every year that ends with an even number.

**ESSENTIAL REQUIREMENTS**

Large employers, i.e. employers with 150 and more employees, must complete the entire EEA2 reporting form. Small employers, i.e. employers with fewer than 150 employees, must only complete areas of the EEA2 form that apply to them. Large employers, i.e. employers with 150 and more employees, must complete the entire EEA2 reporting form. Small employers, i.e. employers with fewer than 150 employees, must only complete areas of the EEA2 form that apply to them. All relevant areas of the form must be fully and accurately completed by employers. **Designated employers who fail to observe this provision will be deemed not to have reported.** Guidance to overcome difficulties on how to complete the form properly must be obtained from the Department prior to completing and submitting the report.

**SEND TO:**

Employment Equity Registry  
The Department of Labour  
Private Bag X117  
Pretoria 0001  
Telephone: 012 3094000  
Facsimile: 012 3094737 / 3094188  
e-mail: ee@labour.gov.za

**SECTION A: EMPLOYER DETAILS**

Trade name	
DTI registration name	
DTI registration number	
PAYE/SARS number	
UIF reference number	
EE reference number	
Industry/Sector	
Seta classification	
Telephone number	
Fax number	
Email address	
Postal address	
Postal code	
City/Town	
Province	
Physical address	
Postal code	
City/Town	
Province	

**Details of CEO at the time of submitting this report**

Name and surname	
Telephone number	
Fax number	
Email address	

**Details of Senior Manager for Employment Equity at the time of submitting this report**

Name and Surname	
Telephone number	
Fax number	
Email address	

**Business type**

Private Sector	Parastatal
National Government	Provincial Government
Local Government	Educational Institution
Non-profit Organization	

**Information about the organization at the time of submitting this report**

Number of employees in the organization	0 to 49 50 to 149 150 or more
In terms of Section 14 of the Act, are you voluntary complying?	Yes No
Is your organization an organ of State?	Yes No
Date of submitting this report	

Please indicate the preceding twelve-month period (in the case of large employers) or twenty-four month period (in the case of small employers) covered by this report, except for first time reporting where this may not be possible:

From (date): \_\_\_\_\_ To (date): \_\_\_\_\_

Please indicate below the duration of your current employment equity plan:

From (date): \_\_\_\_\_ To (date): \_\_\_\_\_

### Please read this first

- a. The preceding twelve-month period (in the case of large employers) or twenty-four month period (in the case of small employers) covered by employment equity employer reports must be the same for every reporting period.
- b. A summary providing guidelines on occupational categories and levels is provided in annexure 3 and annexure 4 of the regulations. Employers must complete the EEA2 form and the EEA4 form in accordance with Annexure 3 and Annexure 4.
- c. Non-permanent workers refer to those workers who are employed to work for less than 24 hours per month, or those workers engaged to work for not more than 3 continuous months.
- d. In Section B, the subtotals in terms of race and gender in the row dealing with **total permanent** employees in the table on occupational categories for **all employees**, which includes people with disabilities, must be exactly the same as the subtotals in the table on occupational levels for **all employees**. The same must apply to the subtotals in the **grand total** rows for occupational categories and levels as well.
- e. In Section B, the subtotals in terms of race and gender in the row dealing with **total permanent** employees in the table on occupational categories for **people with disabilities** must be exactly the same as the subtotals in the table on occupational levels for **people with disabilities**. The same must apply to the subtotals in the **grand total** rows for occupational categories and levels as well.
- f. Employers, from the second cycle of reporting onwards, must complete Section G that deals with progress reports.
- g. Employers must complete Section H that deals with **numerical goals** and **numerical targets**. **Numerical goals** are the workforce profile the employer is striving to achieve in the workplace at the end of the duration of the employer's current employment equity plan. The numerical goals of the employer must be the same for the entire duration of the employment equity plan. **Numerical targets** are the workforce profile the employer is striving to achieve at the end of the period following the period covered by the current report of the employer.
- h. Large employers, i.e. employers with 150 and more employees, must complete the entire EEA2 reporting form. Small employers, i.e. employers with fewer than 150 employees, must only complete areas of the EEA2 form that apply to them. Areas that only apply to small employers shall be made available by the Department in a separate form as well. All relevant areas of the form must be fully and accurately completed by employers.
- i. The alphabets "A", "C", "I" and "W" used in the tables have the following corresponding meanings and must be interpreted as "Africans", "Coloureds", "Indians" and "Whites" respectively.
- j. "**Designated groups**" means Black people (i.e. Africans, Coloureds and Indians), women and people with disabilities who are natural persons and are citizens of the Republic of South Africa by birth or descent; or are citizens of the Republic of South Africa by naturalization before the commencement date (i.e. 27 April 1994) of the Constitution of the Republic of South Africa Act of 1993; or became citizens of the Republic of South Africa from the commencement date of the Constitution of the Republic of South Africa Act of 1993, but who, not for Apartheid policy that had been in place prior to that date, would have been entitled to acquire citizenship by naturalization prior to that date.
- k. All population groupings who are not part of the Black group, but in substance fall within the definition described in paragraph (j) in terms of citizenship or descent, must be counted and included in the column of each table in the form that require data on the White group.
- l. Foreign nationals and South African citizens that fall outside the definition described in paragraphs (j) or (k) must be counted and included in the column of each table in the form that require data on foreign nationals.





### 2.3 Core operation functions and Support functions by occupational level

Job evaluation or grading systems, as illustrated in the EEA9, are used to measure a job in terms of content in order to establish its worth or value in relation to other jobs in an organization. The worth or value of a job is represented on a vertical axis as an occupational level. A job could either be a **Core operation** function or a **Support** function. **Core Operation Function** positions are those that directly relate to the core business of an organization and may lead to revenue generation, e.g. sales, production, etc. Whereas **Support Functions** positions provide infrastructure and other enabling conditions for revenue generation, e.g. human resources, corporate services, etc. Please indicate on table 2.3.1 the number of employees that are in **Core Operation Function** positions and in table 2.3.2 the number of employees that are in **Support Function** positions at each occupational level.

2.3.1 Please indicate the total number of employees (including people with disabilities), that are involved in **Core Operation Function** positions at each level in your organization. Note: A=Africans, C=Coloureds, I=Indians and W=Whites

Occupational Levels									Foreign Nationals		TOTAL
	Male				Female				Male	Female	
	A	C	I	W	A	C	I	W			
Top management											
Senior management											
Professionally qualified and experienced specialists and mid-management											
Skilled technical and academically qualified workers, junior management, supervisors, foremen, and superintendents											
Semi-skilled and discretionary decision making											
Unskilled and defined decision making											
<b>TOTAL PERMANENT</b>											
Non – permanent employees											
<b>GRAND TOTAL</b>											

2.3.2 Please indicate the total number of employees (including people with disabilities), that are involved in **Support Function** positions at each level in your organization. Note: A=Africans, C=Coloureds, I=Indians and W=Whites

Occupational Levels									Foreign Nationals		TOTAL
	Male				Female				Male	Female	
	A	C	I	W	A	C	I	W			
Top management											
Senior management											
Professionally qualified and experienced specialists and mid-management											
Skilled technical and academically qualified workers, junior management, supervisors, foremen, and superintendents											
Semi-skilled and discretionary decision making											
Unskilled and defined decision making											
<b>TOTAL PERMANENT</b>											
Non – permanent employees											
<b>GRAND TOTAL</b>											